

UNITED STATES COURT OF APPEALS

JUL 29 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

MARVIN BISHOP,

Petitioner-Appellant,

v.

LARRY EMBRY; ATTORNEY
GENERAL FOR THE STATE OF
COLORADO,

Respondents-Appellees.

No. 96-1404
(D.C. No. 96-B-664)
(District of Colorado)

ORDER

Before **SEYMOUR**, Chief Judge, **PORFILIO** and **MURPHY**, Circuit Judges.

Marvin Bishop appeals the dismissal of his pro se petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. The matter is before us upon an application to proceed without payment of fees and an application for certificate of appealability. Having established his inability to pay, Mr. Bishop is entitled to proceed in forma pauperis. *United States v. Simmonds*, 111 F.3d 737 (10th Cir. 1997). The motion to proceed without payment of fees is **GRANTED**.

We have examined the application for certificate of appealability and the record and conclude Mr. Bishop has failed to demonstrate the denial of a constitutional right by showing the issues raised in his appeal are debatable among jurists; that a court could resolve the issues differently, or that the questions deserve further proceedings. Substantially for the reasons cited in the recommendation of the Magistrate Judge, the certificate of appealability is **DENIED** and the appeal is **DISMISSED**.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge